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No. 91-142

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

TIDEWATER MARINE SERVICES, INC. and WESTERN BOAT OPERATORS, INC.,

Petitioners,

vs.

LLOYD W. AUBRY, JR., STATE OF CALIFORNIA LABOR COMMISSIONER, and DIVISION OF LABOR STANDARDS ENFORCEMENT, STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

JEROME C. SCOWCROFT
Counsel of Record
Kenneth H. Volk
Paul N. Daigle
1420 5th Avenue, Suite 2600
Seattle, WA 98101
(206) 621-9168

Attorneys for the Maritime Law Association of the United States, Application for Leave to File a Brief as Amicus Curiae

TABLE OF CONTENTS

Page

Table of Authorities iii

Motion By The Maritime Law Association of the United States to File *Amicus Curiae* Brief I

Nature of Applicant's Interest II

The MLA Can Make a Unique Contribution on Relevant Issues VII

Brief in Support of a Petition for a Writ of Certiorari 1

Question of Law Presented 2

Interest of *Amicus Curiae* 2

Summary of Reasons for Granting the Writ 2

Reasons for Granting the Writ 3

I. The Application of California Overtime Compensation Laws to Maritime Employees Violates the Constitutional Mandate of Uniformity . . 3

A. Contracts Between Seamen and Their Employers Should Be Enforced Uniformly Throughout the United States Regardless of Where the Contract Is Made or the Work Is Performed 3

B. The Decision of the Ninth Circuit Court of Appeals Would Be Extremely Detrimental to Maritime Commerce 4

C. The Ninth Circuit's Decision Would Also Be Harmful to the Interests of the States 8

D. The Localized Nature of Individual Workers' Employment Has Never Justified a Departure from the Mandate of Uniformity 9

E. The Mandate of Uniformity Is a Long-Standing Requirement That Pervades Every Aspect of Maritime Employment 12

II. Application of State Law to Seamen's Employment Agreements Is Preempted by Extensive Federal Legislation 14
Conclusion 17

TABLE OF AUTHORITIES

Cases: Page

Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973) V
Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947) 15
Chelentis v. Luckenbach S.S. Co., Inc., 247 U.S. 372, 38 S. Ct. 501 (1918) 10,11
Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988) . V
Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S. Ct. 308 (1964) 13
Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S. Ct. 406 (1959) 11
Kossick v. United Fruit Company, 365 U.S. 731, 81 S. Ct. 886 (1961), reh. denied, 366 U.S. 941, 81 S. Ct. 1657 (1961) 3,4
Lindgren v. United States, 281 U.S. 38, 50 S. Ct. 207 (1930) 13
Lloyd v. Goodall, 102 U.S. 541 (1881) 12
London Co. v. Industrial Commission, 279 U.S. 109 (1929) 12
Matter of S/S Helena, 529 F.2d 744 (5th Cir. 1976) . . . 14
Miles v. Apex Marine Corporation, ___ U.S. ___, 111 S. Ct. 317 (1990) 14,15,16
Moragne v. States Marine Lines, 398 U.S. 375, 90 S. Ct. 1772 (1970) 13,14
Napier v. Atlantic Coast Line, 272 U.S. 605 (1926) 15
Nelson v. United States, 639 F.2d 469 (9th Cir. 1980) . . 14
Norfolk & Western Ry. v. Public Utilities Comm., 926 F.2d 567 (6th Cir. 1991) 15

Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 106 S. Ct. 2485 (1986) V,VI,12,13
Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202 (1953) 11
Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978) . . . V,15,16
Southern Pacific Company v. Jensen, 244 U.S. 205, 37 S. Ct. 524 (1916) 9,10,11,14
The Harrisburg, 119 U.S. 199, 7 S. Ct. 140 (1886) 13
The Osceola, 189 U.S. 158, 23 S. Ct. 483 (1903) 10,13
The Tungus v. Skovgaard, 358 U.S. 588, 79 S. Ct. 503 (1959) 13
U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 91 S. Ct. 409 (1971) 15,16
Union Fish Co. v. Erickson, 248 U.S. 308 (1919) 12

Statutes:

Act of July 20, 1790 16
Carriage of Goods By Sea Act, 46 U.S.C. § 1300-1315 II
Death on the High Seas Act, 46 U.S.C. § 767 . . . . . V,13,14
Fair Labor Standards Act, Sec. 13(b)(6) 16
Federal Arbitration Act, 9 U.S.C. §§ 1-15 II
Jones Act, 46 U.S.C. § 688 13
Labor Management Relations Act, 29 U.S.C. § 185 16
1972 Water Pollution Control Act Amendments, 33 U.S.C. §§ 1251-1376 III
United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073 III

United States Code, Title 46,
Secs. 10301(b), 10303(e)-(i), 10501(b),
10504(a)-(e), 2101(12) 16
United States Code, Title 46,
Secs. 7101-11501 16
52 Stat. 1067, Sec. 13(a)(3), c. 676 (1938) 16
75 Stat. 71, Secs. 9 & 10 (1961) 16

Conventions and Treaties:
Assistance and Salvage Convention (1910), 37 Stat.
1658 (1913), *reprinted in* 6 M.M. COHEN,
BENEDICT ON ADMIRALTY, Doc. No. 4-1
(7th rev'd ed. 1990) ("BENEDICT") IV
Civil Liability for Oil Pollution Damages Convention
(1969), U.N.T.S. 1409, *reprinted in* 6 BENEDICT,
Doc. No. 6-3 IV
Collision Convention (1910), *reprinted in* 6 BENEDICT,
Doc. No. 3-2 IV
Limitation on Liability for Maritime Claims (1976),
reprinted in 6 BENEDICT, Doc. No. 5-4 IV
Limitation on Liability of Owners of Sea-Going Ships
(1957), *reprinted in* 6 BENEDICT, Doc. No. 5-2 . . . IV
Maritime Liens and Mortgages Convention (1967),
reprinted in 6A BENEDICT, Doc. No. 8-3 IV
1972 Convention for Preventing Collisions at Sea, 28
U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as
amended, T.I.A.S. 10672, *reprinted in* 6 BENEDICT,
Doc. No. 3-4 III
Ocean Bills of Lading Convention (The Hague Rules)
(1924), 120 L.N.T.S. 155, *reprinted in* 6
BENEDICT, Doc. No. 1-1 IV

Regulations:
29 C.F.R. § 783.0 et seq. 17
33 C.F.R. ch. 1 III

Rules:
Rules of the Supreme Court of the United States,
Rule 37.2 I

Textbooks, Articles and Treatises:
Friedell, Benedict on Admiralty, § 112, p. 7-37 15

Miscellaneous:
Hearings on S. 2475 and H.R. 7200 Before the Senate Comm. on Education and Labor and the House Comm. on Labor, 75th Cong., 1st Sess. 544-549 (1937) 17
Hearings on S. 256, S. 879, S. 895 and Bills Amending the FLSA Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 87th Cong., 1st Sess. 376-379 (1961) 17
S. Rep. No. 145, 87th Cong., 1st Sess. 32-33 (1961) . . . 17

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MOTION BY THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO FILE *AMICUS CURIAE* BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

Applicant, The Maritime Law Association of the United States ("MLA"), moves the Court for permission to file an amicus curiae brief in support of the Petition for Writ of Certiorari filed by Tidewater Marine Services, Inc., and Western Boat Operators, Inc. (collectively "Petitioners"). Petitioners have given consent to the MLA to file an amicus brief, but Respondents have refused to consent. Accordingly, leave to file must be sought pursuant to Rule 37.2.

II

NATURE OF APPLICANT'S INTEREST

Applicant has a very strong interest in the disposition of this case. The MLA is a nationwide bar association founded in 1899. It has a membership of about 3600 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association and is represented in that Association's House of Delegates.

The MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests - shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

The purposes of the MLA are stated in its Articles of Association:

> The objectives of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to promote uniformity in its enactment and interpretation, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, to participate as a constituent member of the Comite Maritime International and as an affiliated organization of the American Bar Association, and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations. (Emphasis added).

In furtherance of these objectives, the MLA has, during its ninety-one years of existence, sponsored a wide range of legislation dealing with maritime matters including the Carriage of Goods by Sea Act[1] and the Federal Arbitration Act.[2] The MLA

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[1]46 U.S.C. §§ 1300-1315.

has also cooperated with congressional committees in the formulation of other maritime legislation.[3]

The MLA is also participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its commissions on trade law ("UNCITRAL") and trade and development ("UNCTAD"). It works closely with the International Maritime Organization ("IMO").

The MLA has actively participated, as one of some forty-nine national maritime law associations constituting the Comite Maritime International,[4] in the movement to achieve maximum

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[2]9 U.S.C. §§ 1-15.

[3]E.g., 1972 Water Pollution Control Act Amendments, 33 U.S.C. §§ 1251-1376; implementation of the 1972 Convention For Preventing Collisions at Sea, 28 U.S.T. 3459, T.I.A.S. 8587, U.N.T.S. 15824, as amended, T.I.A.S. 10672, reprinted in 6 M.M. Cohen, BENEDICT ON ADMIRALTY, Doc. No. 3-4 at 3.35 to 3-78.2 (7th rev'd ed. 1990) (hereinafter "BENEDICT"), see 33 C.F.R. ch. 1, subch. D., Special Note at 160 (1987); United States Inland Navigation Rules, 33 U.S.C. §§ 2001-2073.

[4]These now include the national associations of Argentina, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany, German Democratic Republic, Greece, Hong Kong, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Mexico, Morocco, The Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Union of Soviet Socialist Republics, Venezuela and Yugoslavia.

international uniformity in maritime law through the medium of international conventions.[5]

The MLA believes that uniformity in maritime law, both national and international, is of great importance. This concern has been repeatedly expressed by the MLA's membership and standing committees. For example, in 1975 the MLA Standing Committee on Uniformity of United States Maritime Law recommended that steps be taken to persuade congressional committees "that nationwide and, in fact, worldwide uniformity in the Maritime Law is highly desirable, not only from the standpoint of those involved with maritime commerce but from that of the public as well." A resolution to that effect was unanimously adopted at the MLA Annual Spring Meeting on April 25, 1975.[6] A substantially identical resolution was adopted by the American Bar Association in 1976. This policy has since been reaffirmed by the MLA on several occasions, most recently in a 1986 resolution.[7]

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[5]E.g., Assistance and Salvage (1910), 37 Stat. 1658 (1913), reprinted in 6 BENEDICT, Doc. No. 4-1 at 4-2 to 4-10; Ocean Bills of Lading (The Hague Rules) (1924), 120 L.N.T.S. 155, reprinted in 6 BENEDICT, Doc. No. 1-1 at 1-2 to 1-19; Collision (1910), reprinted in 6 BENEDICT, Doc. No. 3-2 at 3-11 to 3-19; Limitation of Liability of Owners of Sea-Going Ships (1957), reprinted in 6 BENEDICT, Doc. No. 5-2 at 5-11 to 5-29; Maritime Liens and Mortgages (1967), reprinted in 6A BENEDICT, Doc. No. 8-3 at 8-25 to 8-32; Civil Liability for Oil Pollution Damages (1969), U.N.T.S. 1409, reprinted in 6 BENEDICT, Doc. No. 6-3 at 6-62.103 to 6-76.3; and Limitation of Liability for Maritime Claims (1976), reprinted in 6 BENEDICT, Doc. No. 5-4 at 5-32.1 to 5-44.3.

[6]MLA Minutes, MLA Doc. No. 558 at 6397-98 (1975).

[7]MLA Minutes, MLA Doc. No. 669 at 8769 (1986).

V

In furtherance of its uniformity policy and resolutions, the MLA has filed amicus briefs in a number of cases, including briefs accepted by this Court.[8] However, it is the policy of the MLA to participate as amicus curiae only when important issues of maritime law are involved and the impact of the Court's decision may be substantial. In one of those cases, Offshore Logistics, Inc. v. Tallentire[9], the Court noted the role of the MLA. Tallentire involved the issue of whether Section 7 of the Death on the High Seas Act (DOHSA), 46 U.S.C. § 767, which provides that "[t]he provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected," was intended to preserve the applicability of state wrongful death statutes on the high seas. The Court stated that:[10]

> The Maritime Law Association ("MLA"), an organization of experts in admiralty law and a prime force in the movement for a federal wrongful death remedy, drafted the bill that was enacted as DOHSA. The MLA envisioned Section 7 to be a jurisdictional savings clause . . . the MLA, an expert body of maritime lawyers, had reason to fear that absent a savings clause specifically recognizing the continued viability of this type of action, state wrongful death remedies on territorial waters might be deemed beyond the competency of state courts.

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[8]Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988); Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986); Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978); Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973). For a more comprehensive listing, see MLA Report, MLA Doc. No. 671 at 8862-63 (1987).

[9]Id.

[10]477 U.S. at 223-224.

The Court in Tallentire agreed with the MLA that Section 7 is a jurisdictional savings clause rather than a congressional endorsement for application of state wrongful death statutes, and held that state statutes are preempted where DOHSA applies.[11]

The present case, like Tallentire, presents an important issue on which the decision of this Court could have a substantial impact upon the uniformity of maritime law. The employees in this case were seamen employed on the high seas and in coastal waters. Consequently, the uniformity of maritime law is gravely threatened by the Ninth Circuit's holding that they are entitled to overtime compensation under California state law.

The conditions of maritime employment are not comparable to those of land-based employment, where it is much more feasible for workers to be employed in standard eight-hour shifts. If individual states are permitted to apply their overtime compensation laws to seamen on vessels in navigation, significant harmful consequences would result to the MLA's membership and the wide variety of interests which it represents. The costs to maritime employers could become so great as to make it difficult for them to continue in operation. Such consequences can be seen in the present case, in which the salaries of certain crewmembers were tripled by virtue of the Ninth Circuit's decision. Moreover, compensation laws might differ from state to state, and the laws of one state might well be incompatible with those of other states purporting to regulate the same vessels. The danger of conflicting state regulation is especially pronounced in maritime commerce, because vessels typically operate on navigable waterways which border on several states. In addition to imposing ruinous labor and administrative costs, the application of differing state compensation laws would expose maritime employers to conflicting standards and produce arbitrary and inequitable differences in the treatment of

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[11]477 U.S. at 231-32.

their employees. It would also interfere with the ability of the Coast Guard to regulate the manning of vessels on a uniform national basis, and with the ability of seamen's unions to represent their members on a uniform national basis. Finally, cost barriers resulting from differences in state compensation laws would impede the free flow of maritime commerce between the states. Accordingly, the MLA urges that this motion be granted.

THE MLA CAN MAKE A UNIQUE CONTRIBUTION ON RELEVANT ISSUES

The MLA's perspective, arising from its interest in the uniformity and predictability of U.S. maritime law, is necessarily different from that of the parties to this particular suit, who are most interested in its outcome as it affects their individual positions. The MLA can comment objectively about the need for review by this Court in order to insure national uniformity on the issues presented. The MLA will concentrate only on the need for uniformity in maritime actions regardless of the forum, and on the dangers of permitting the decision of the Ninth Circuit Court of Appeals to stand.

DATED August 8, 1991.

RESPECTFULLY SUBMITTED:

/s/ JEROME C. SCOWCROFT
JEROME C. SCOWCROFT
Counsel of Record
Kenneth H. Volk
Paul N. Daigle
1420 5th Avenue, Suite 2600
Seattle, WA 98101
(206) 621-9168

Attorneys for the Maritime Law Association of the United States, Applicant for Leave to File a Brief as Amicus Curiae

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BRIEF OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES, *AMICUS CURIAE*, IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI

The Maritime Law Association of the United States ("MLA") respectfully submits this brief as amicus curiae in support of the Petition for Certiorari by Tidewater Marine Services, Inc. and Western Boat Operators, Inc. ("Petitioners").

QUESTION OF LAW PRESENTED

Whether state overtime compensation statutes can apply to seamen employed on vessels in maritime commerce.

INTEREST OF AMICUS CURIAE

This is stated in the Motion which precedes this brief.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The employees in this case were seamen employed on the high seas and the navigable waters of the United States. If California were permitted to apply its overtime compensation laws, then other states would likewise be free to regulate the wages of seamen in maritime commerce. Although the present case involves overtime, there is no reason why the application of state law would be so limited. The result would be that seamen's wage claims could vary significantly from state to state.

When a conflict arises between the application of state law and the uniformity of maritime law, the Constitution requires that consideration must be given to the need for uniformity in relation to the benefits sought by the states from the application of their laws. When it comes to seamen's wages, the need for uniformity is overwhelming. The states would derive little benefit from application of their laws, because seamen comprise only a small fraction of the work force. The goals of the state wage and hour laws would still be met if seamen were excluded from their reach. On the other hand, the maritime industry would be severely harmed if states were permitted to regulate seamen's wage claims. The interests of the states would also be harmed, because the economic barriers resulting from diverse state laws would hinder the flow of maritime commerce. Thus, the Constitutional mandate of uniformity forbids the application of the California overtime laws. There is specific and unambiguous federal maritime case law

rejecting the application of state law in circumstances analogous to those of the present case.

If the wages of seamen were in need of protection, it would be up to Congress rather than the states to supply the necessary legislation. In fact, seamen's wages are among the most highly protected bodies of rights in all of maritime law. They are governed by extensive and stringent federal statutes dating back more than two hundred years. The extensive regulation of seamen's wages by Congress forecloses additional remedies under state law.

REASONS FOR GRANTING THE WRIT

I. THE APPLICATION OF CALIFORNIA OVERTIME COMPENSATION LAWS TO MARITIME EMPLOYEES VIOLATES THE CONSTITUTIONAL MANDATE OF UNIFORMITY.

A. CONTRACTS BETWEEN SEAMEN AND THEIR EMPLOYERS SHOULD BE ENFORCED UNIFORMLY THROUGHOUT THE UNITED STATES REGARDLESS OF WHERE THE CONTRACT IS MADE OR THE WORK IS PERFORMED.

In Kossick v. United Fruit Company, 365 U.S. 731, 81 S. Ct. 886 (1961), reh. denied, 366 U.S. 941, 81 S. Ct. 1657 (1961), an injured seaman sued his employer to recover for improper treatment at a Public Health Service hospital. The seaman contended that the shipowner had agreed orally to remain responsible for the hospital's treatment. The Supreme Court ruled that maritime law should have been applied, instead of the New York statute of frauds, because the application of state law would undermine the mandate of uniformity. The court reasoned that:

> [T]his is such a contract as may well have been made anywhere in the world, and . . . the validity of it should

be judged by one law wherever it was made. 365 U.S. at 741 (citations omitted).

It is equally true that the contracts of seamen employed in a particular jurisdiction need not have been made in that jurisdiction. Seamen are frequently hired in one state for work in another state or throughout the United States. For example, Petitioner Tidewater is headquartered in Louisiana and employs seamen throughout the United States. The seamen's wages should be governed by the same laws regardless of where their contracts are made or the work is performed.

The MLA does not contend that every maritime interest, no matter how slight or marginal, should displace every local interest, no matter how pressing. The Supreme Court stated in Kossick that state and maritime interests must both be considered in determining whether a state statute should be preempted by the need for uniformity. 365 U.S. at 739, 741-42. In the present case, the application of state overtime compensation laws to seamen would be extremely harmful to the maritime industry. The benefit to the states would be only marginal, because maritime employees comprise a very small portion of the work force to which the state overtime compensation laws are directed. Moreover, the application of state overtime compensation laws would harm the states by creating economic barriers to the free flow of maritime commerce. Consequently, the analysis employed in Kossick points to an accommodation favoring uniformity. The decision of the Ninth Circuit Court of Appeals must be reversed.

B. THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS WOULD BE EXTREMELY DETRIMENTAL TO MARITIME COMMERCE.

State overtime laws can be of tremendous significance in maritime commerce, where working conditions differ significantly from the land-based working conditions for which state wage and hour laws are designed. In particular, the realities of shipboard

employment make it impossible in many instances to schedule seamen according to standard eight-hour shifts.

The fundamental differences between maritime and land-based employment are reflected in the Shipping Act and Coast Guard Certificates of Inspection for offshore vessels, which set a maximum work period of twelve hours per day on crew and supply boats such as those operated by Petitioners. Reliance upon those federal standards has created an accepted and customary twelve-hour workday throughout the offshore maritime industry. The application of land-based state compensation laws would destroy those customary practices, because it would require maritime employers to pay for substantial portions of their employees' time at premium overtime rates.

In the present case, for example, the California Labor Commissioner awarded $50,000 in overtime pay to a deckhand with a salary of approximately $25,000 per year, thereby tripling his salary. Other employees received comparable increases in compensation. There are few employers in any industry which could afford such drastic fluctuations in their payrolls. The industry as a whole would suffer from the economic dislocations which the Ninth Circuit's decision would produce if allowed to stand.

The Ninth Circuit's decision would also interfere with the ability of the Coast Guard to implement its manning requirements uniformly. The application of differing state laws to crewmembers' compensation would produce significant differences among states as to the cost of complying with those requirements.

Moreover, many seamen are employed under collective bargaining agreements which are intended to apply uniformly throughout the nation. The application of state overtime and other compensation laws to such workers would destroy the uniform

application of the collective bargaining agreements, and interfere with the ability of unions to represent their members nationally.

The decision of the Ninth Circuit was based in part on the majority's conclusion that the need for uniformity is less with respect to vessels that are engaged in local offshore operations. However, it is impossible to distinguish between vessels which work locally and those which travel between different jurisdictions. Almost every vessel in maritime commerce has the potential for interstate operation at any time. Companies like Petitioners are likely to work in several different states. Their vessels and their employees are apt to travel between jobs in different states. Moreover, there are many navigable waterways on which vessels operate routinely among several states. Examples are the Columbia River between Washington and Oregon; the Delaware River between New Jersey, Delaware and Pennsylvania; the Mississippi River, the Gulf of Mexico, the Great Lakes, and Chesapeake Bay, on which vessel operations frequently involve several states; and the Hudson River and New York harbor between New York and New Jersey.

If California can apply its overtime laws to seamen, other states can do so as well. A situation would quickly arise in which seamen would be exposed to fortuitous and inequitable differences in treatment, shipowners would be exposed to enormous expenses and administrative burdens, the courts would be exposed to forum shopping, and irreconcilable conflicts would arise.

The Ninth Circuit's decision emphasizes that the maritime employees involved in this action are California residents. However, it is common for vessels operating on waterways such as the Columbia River, Delaware River or New York Harbor to employ crews comprised of residents from several states. On the Columbia River, for example, the Panel's decision would permit the states of Washington and Oregon to apply their own laws to their own residents. Crewmen who occupy the same rank and do

the same work on the same vessel at the same place and time could then receive substantially different amounts of pay because of differences in state laws. The results would be inequitable and divisive for the crewmen, as well as burdensome and expensive for the shipowners.

Another example is the Pacific Northwest fishing industry, in which it is common for crewmen on a single vessel to come from areas throughout the United States and perform services in Oregon, Washington, Alaska, or all three of those states.

The Ninth Circuit's decision is unrealistic even for companies which are localized in California. For example, Clean Seas Association was a party in the proceedings below. It is involved in the containment and recovery of open ocean oil spills. An oil spill could easily occur near the California-Oregon border. Such a spill would involve residents of California, Oregon and elsewhere, employed by Clean Seas and a variety of other companies. The vessels involved in cleanup and containment would operate in both Oregon and California waters. (The relevance of this scenario is illustrated by the NESTUCCA oil spill in 1988, in which oil contacted beaches all the way from central Washington to northern British Columbia.) Under the Ninth Circuit's decision, both Oregon and California would be entitled to apply their laws to their residents for overtime incurred in their waters. It would be impossible to keep track of which workers were entitled to be compensated under which laws during which periods of time. It would be inequitable for the employers and employees to have compensation depend upon whether a vessel happened to be in Oregon waters, California waters, or on the high seas when the overtime occurred. It would be unfair to limit the employees from other states to base pay when workers from Oregon and California were earning overtime. It would be equally unfair to arbitrarily assign such employees to one state or the other.

The Ninth Circuit's decision would also expose maritime employers to conflicting state standards, because the overtime laws in the states where they operate might not be uniform. For example, a fleet of vessels operating between New York and New Jersey might well hire both New York and New Jersey residents. The New Jersey legislature might make its overtime laws applicable to New Jersey residents, while the New York legislature might make its overtime laws applicable to services performed in New York waters. Moreover, the compensation schemes might vary substantially between the two states, and the statutes of each state might include fines and penalties for non-compliance. The New York employees would be victimized during New Jersey operations, because only the New Jersey residents would be entitled to overtime. The employer would be victimized during New York operations, because it would be subject to conflicting standards. At all times the employer would face the ruinous burden of keeping track of the dates, locations and amounts of overtime for its employees. The same problems would be faced by fleets of tugboats and/or barges operating on the Columbia, Delaware and Mississippi Rivers, hiring employees from two or more states for work in two or more states.

The preceding examples are not exaggerated or unrealistic. They reflect the ordinary, everyday realities of maritime commerce. In order to avoid the problems illustrated by those examples, the Court must reverse the Ninth Circuit's decision and rule that the California overtime laws cannot be applied to seamen.

C. THE NINTH CIRCUIT'S DECISION WOULD ALSO BE HARMFUL TO THE INTERESTS OF THE STATES.

The Ninth Circuit neglected important state interests which weigh against the application of California law. Maritime workers comprise only a small portion of California's work force. The objectives of California's overtime compensation laws would still be met if maritime workers were excluded. On the other hand,

California has a substantial interest in the free flow of maritime commerce among the states. That interest would be frustrated if maritime employment contracts were subject to local wage laws.

For example, the present action includes a Louisiana company performing supply services off the California coast. It also includes an organization created for oil spill cleanup and damage prevention. There are only a few companies with the expertise to provide such services, and they are employed throughout the United States.

These examples illustrate that the expertise and resources needed for maritime operations are not uniformly distributed. It is in the interests of every maritime state to avoid barriers which would hinder the free flow of personnel and materials which the industry requires. Such barriers can be avoided only by adhering to the rule that seamen's employment contracts cannot be modified by diverse local laws.

D. THE LOCALIZED NATURE OF INDIVIDUAL WORKERS' EMPLOYMENT HAS NEVER JUSTIFIED A DEPARTURE FROM THE MANDATE OF UNIFORMITY.

The decision in Southern Pacific Company v. Jensen, 244 U.S. 205, 37 S. Ct. 524 (1916), should control this case. Jensen involved a longshoreman who was killed on a pier in New York City while loading a steamship which operated between New York and Texas. The Supreme Court held that the New York State workers' compensation statute could not constitutionally be applied to longshoremen or other employees engaged in maritime commerce. The Court reasoned that:

> [N]o such legislation is valid if it . . . works material prejudice to the characteristic features of general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations . . . .

* * *

> If New York can subject foreign ships coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the states and with foreign countries would be seriously hampered and impeded . . . . 244 U.S. at 216-17.

There is no exception in Jensen for workers who reside and work solely within the state whose laws are at issue. In fact, the work of longshoremen such as Jensen is typically limited to the locations in which they reside. Their employment is every bit as localized as that of the workers in the present case. Moreover, the operations of companies such as Petitioners are fully as interstate as the operations of Southern Pacific, and the application of state law would impede maritime commerce as much in the present case as in Jensen.

Jensen was followed by Chelentis v. Luckenbach S.S. Co., Inc., 247 U.S. 372, 38 S. Ct. 501 (1918). Chelentis involved a seaman who sued his employer for injuries caused by the master's negligence. In the earlier case of The Osceola, 189 U.S. 158 (1903), the Supreme Court had held that there was no cause of action under maritime law for such injuries. The seaman contended in Chelentis that he was entitled to recover under the common law, rather than maritime law, by virtue of the Savings to Suitors Clause in Section 9 of the Judiciary Act of 1789, 1 Stat. 96. The Savings Clause "saved to suitors, in all cases, the right of a common-law remedy where the common law is competent to give it." The Supreme Court held that under the Constitutional mandate of uniformity, the common law was not competent to give a negligence cause of action to seamen. The Court stated that:

> No state has the power to abolish the well-recognized maritime rule concerning measure of recovery and substitute therefor the full indemnity rule of the common law. Such a substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the 'uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.' 247 U.S. at 382 (citations omitted).

Jensen and Chelentis are not alone in holding that localized maritime transactions must be governed by a uniform maritime law. In Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202 (1953), a carpenter employed by a refitting company was injured while working on a ship which his employer had agreed to repair. The carpenter resided and worked in Pennsylvania, where the ship was temporarily berthed. Moreover, shipyards are stationary work sites which employ local residents. Their operations are every bit as localized as the work in the present case, if not more so. The Supreme Court held nevertheless that the carpenter's right of action against the shipowner was governed by the maritime rule of comparative fault rather than the Pennsylvania rule of contributory negligence. The Court stated that:

> True, Hawn was hurt inside Pennsylvania . . . . But he was injured on navigable waters while working on a ship to enable it to complete its loading . . . . Consequently . . . [h]is right of recovery for unseaworthiness and negligence is rooted in federal maritime law. 346 U.S. at 409, 74 S. Ct. at 205.

A similar result was reached in Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S. Ct. 406 (1959), in which the guest of a crewman sued the shipowner for injuries received when he fell down a stairway on a vessel in New York City. The guest was not involved with the business of the vessel,

and did not travel with it. The casualty was therefore a purely local incident, except for the fact that it occurred on a vessel berthed at a pier in navigable waters. The state's interest in having its laws applied was every bit as great in Kermarec as in the present case. The Supreme Court held nevertheless that the shipowner's duty to the guest was governed by maritime rather than state law.

In Lloyd v. Goodall, 102 U.S. 541 (1881), the Supreme Court held that federal admiralty law preempted state statutes concerning a vessel which operated exclusively off the coast of California, like the vessels involved in the present case. See also London Co. v. Industrial Commission, 279 U.S. 109 (1929), in which the Court found preemption of state law concerning a casualty which occurred in California coastal waters, and Union Fish Co. v. Erickson, 248 U.S. 308 (1919), which held that the application of California's statute of frauds to a seaman's oral employment contract made within the state was preempted by the need to have a uniform rule for maritime employment contracts.

The foregoing decisions indicate that the mandate of uniformity applies with equal force to seamen and employers who reside or work locally. If seamen's contracts are to be supplemented by compensation laws, the laws must be enacted by Congress and be national in scope. The Supreme Court stated recently that even Congress may be forbidden from supplementing maritime employment contracts by diverse state compensation statutes. Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 229, 106 S. Ct. 2485 (1986).

E. THE MANDATE OF UNIFORMITY IS A LONG-STANDING REQUIREMENT THAT PERVADES EVERY ASPECT OF MARITIME EMPLOYMENT.

The all-encompassing nature of the uniformity requirement is illustrated dramatically by the history of seamen's actions for

personal injury and death. Prior to 1920, general maritime law was held to preclude an action for wrongful death. The Harrisburg, 119 U.S. 199, 7 S. Ct. 140 (1886). It was also held to preclude an action by seamen against their employers for negligence. The Osceola, 189 U.S. 158, 23 S. Ct. 483 (1903). Because there was no maritime remedy, state statutes were permitted to supply a remedy for seamen killed in state waters. See, for example, The Tungus v. Skovgaard, 358 U.S. 588, 79 S. Ct. 503 (1959). In 1920, Congress enacted the Jones Act to provide a remedy for seamen injured or killed as a result of their employer's negligence. Once the Jones Act was adopted, the Supreme Court held that state wrongful death statutes could no longer be applied to seamen. Lindgren v. United States, 281 U.S. 38, 50 S. Ct. 207 (1930). Thirty-four years later, in Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S. Ct. 308 (1964), the Supreme Court reaffirmed that because of the mandate of uniformity, state wrongful death statutes cannot apply to seamen covered by the Jones Act. 379 U.S. at 155.

Also in 1920, Congress enacted the Death on the High Seas Act (DOHSA), supra, to provide recovery for wrongful death on the high seas. Once DOHSA was enacted, it was afforded the same treatment as the Jones Act in Lindgren and Gillespie. In Offshore Logistics, Inc. v. Tallentire, supra, the Supreme Court held that DOHSA preempts state wrongful death statutes.

DOHSA permitted recovery for deaths caused by unseaworthiness as well as negligence. However, The Harrisburg continued to preclude recovery for wrongful death under general maritime law. As a result, a number of anomalies existed with respect to seamen who were killed in the course of their employment. For example, death caused by unseaworthiness was actionable if it occurred on the high seas, but frequently not if it occurred in state territorial waters. The Supreme Court therefore overruled The Harrisburg and created a maritime wrongful death action. Moragne v. States

Marine Lines, 398 U.S. 375, 90 S. Ct. 1772 (1970). A principal reason for the decision was to:

> [G]ive effect to the constitutionally based principle that federal admiralty law should be a system of law coextensive with, and operating uniformly in, the whole country. 398 U.S. at 402 (citations omitted).

Now that a wrongful death action has been recognized under general maritime law, it is evolving in the same manner as the Jones Act and DOHSA with regard to uniformity. In Matter of S/S Helena, 529 F.2d 744 (5th Cir. 1976), and Nelson v. United States, 639 F.2d 469 (9th Cir. 1980), it was held that the general maritime cause of action preempts the very state statutes which were theretofore the only remedy for wrongful death in state territorial waters. In Nelson, the Ninth Circuit stated particularly that:

> The need for uniformity in maritime wrongful death actions requires extension of Moragne to cover claims based on negligence to the exclusion of state wrongful death statutes. 639 F.2d at 473.

Uniformity is therefore a fundamental imperative which must be given great weight by the courts. When the weight of that imperative is combined with decisions such as Jensen, which holds squarely that state compensation statutes cannot constitutionally be applied to maritime employees, and with consideration of the federal and state interests which would be impaired by the Ninth Circuit's decision, the conclusion becomes inescapable that the Ninth Circuit's decision must be reversed.

II. APPLICATION OF STATE LAW TO SEAMEN'S EMPLOYMENT AGREEMENTS IS PREEMPTED BY EXTENSIVE FEDERAL LEGISLATION.

The decision of the Ninth Circuit was prior to the recent decision in Miles v. Apex Marine Corporation, ___ U.S. ___, 111 S. Ct. 317 (1990). The Supreme Court held in Miles that the

damages recoverable in a general maritime action for the death of a seaman do not include loss of society, and that a general maritime survival action cannot include recovery for the decedent's lost future earnings. The Court's reasoning in Miles applies to the present case. The Court stated that Congress has legislated extensively with respect to the substantive legal protections available to seamen, and:

> We may supplement the statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. 111 S. Ct. at 323 (emphasis added).

Similarly, the Supreme Court stated in Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978), that:

> [W]here failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved. . . . States are not permitted to use their police powers to enact such a regulation.

435 U.S. at 178, quoting Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 774 (1947). Accord Napier v. Atlantic Coast Line, 272 U.S. 605 (1926); Norfolk & Western Ry. v. Public Utilities Comm., 926 F.2d 567, 570 (6th Cir. 1991). See also Friedell Benedict on Admiralty Section 112, page 7-37, which states that:

> As the Supreme Court has long recognized, the absence of a federal right of recovery may suggest a strong federal interest, and when a state 'supplements' the federal law by adding a cause of action it thereby deprives the defendant of a substantive right to be free of an obligation.

The foregoing authorities indicate that state law is preempted by federal statutes pertaining to seamen's wages. Seamen are among the most carefully protected groups in the maritime industry. See U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351,

91 S. Ct. 409 (1971), which held that Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (1986), does not preclude seamen from suing the shipowner for overtime wages and penalty wages under the appropriate sections of the seamen's wage statutes, 46 U.S.C. §§ 10301(b), 10303(e)-(i), 10501(b), 10504(a)-(e), and 2101(12) (West Supp. III 1985). Seamen have been wards of Congress for over 200 years. Arguelles, supra, 400 U.S. at 355. Their rights vis-a-vis their employers have been carefully protected by extensive federal legislation. Subtitle II of 46 U.S.C. is devoted to vessels and their crew. Parts E-G of Subtitle II, 46 U.S.C. § 7101-11501, are dedicated to the manning of vessels, the documentation of seamen, and the rights of seamen under their employment contracts. Those statutes are traceable back to the Act of July 20, 1790. Arguelles, supra, 400 U.S. at 353-54.

The federal seamen's wage statutes have omitted maximum hour and overtime provisions of the kind which California seeks to impose in this case. There can be no question that Congress would have included such provisions if it had wanted to do so. Their omission from the very strict and pervasive seamen's wage statutes must be regarded as a ruling within the meaning of the Miles and Ray decisions that such provisions are inappropriate and therefore disapproved for seamen. This conclusion is bolstered by Section 13(b)(6) of the Fair Labor Standards Act. ("FLSA"), 29 U.S.C. § 213(b)(6). Section 13(b)(6) specifically exempts seamen from land-based maximum hour and overtime standards. The FLSA originally exempted seamen from both minimum wage and overtime provisions. 52 Stat. 1067 § 103(a)(3), c. 676 (1938). In 1961 Congress amended the FLSA to apply the minimum wage to seamen. However, Congress continued to exempt seamen from the maximum hour and overtime provisions. 75 Stat. 71, §§ 9 & 10 (1961). During both legislative sessions, Congress recognized the necessity of exempting seamen from the overtime provisions because of their variable and unscheduled working hours and the

existing regulation of seamen's working conditions by federal maritime agencies. See Hearings on S. 2475 and H.R. 7200 Before the Senate Comm. on Education and Labor and the House Comm. on Labor, 75th Cong., 1st Sess. 544-49 (1937); Hearings on S. 256, S. 879, S. 895 and Bills Amending the FLSA Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 87 Cong., 1st Sess. 376-79 (1961); S. Rep. No. 145, 89th Cong., 1st Sess. 32-33 (1961). See also 29 C.F.R. § 783.0 et seq., discussing the FLSA legislative history.

CONCLUSION

This Court must rule on two grounds that the California overtime compensation laws cannot constitutionally be applied to seamen. The first ground is that the application of California law is contrary to the Constitutional mandate of uniformity. A number of decisions by the United States Supreme Court have forbidden the application of state law to seamen's employment contracts even when the transactions at issue are localized in nature. The second ground is that courts and state legislatures may not supplement the remedies provided by Congress in the federal seamen's wage statutes.

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RESPECTFULLY SUBMITTED:

/s/ JEROME C. SCOWCROFT
JEROME C. SCOWCROFT
Counsel of Record
Kenneth H. Volk
Paul N. Daigle
1420 5th Avenue, Suite 2600
Seattle, WA 98101
(206) 621-9168

Attorneys for the Maritime Law Association of the United States, Application for Leave to File a Brief as Amicus Curiae